

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION**

In re:	:	
	:	
Timothy C Laug	:	Case No.: 11-11267
Angela C Laug	:	Chapter 7
	:	Judge Burton Perlman
Debtor(s).	:	*****
	:	
	:	

**MOTION OF GMAC MORTGAGE, LLC FOR RELIEF FROM STAY ON FIRST
MORTGAGE FOR REAL PROPERTY LOCATED AT 5494 MALLARD DRIVE,
CINCINNATI, OH 45247**

GMAC Mortgage, LLC (the "Creditor"), by and through its mortgage servicing agent GMAC Mortgage LLC, moves this Court, under §§ 361, 362, 363 and other sections of the Bankruptcy Reform Act of 1978, as amended (the "Bankruptcy Code") and under Rules 4001 and other rules of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules") for an Order conditioning, modifying or dissolving the automatic stay imposed by § 362 of the Bankruptcy Code. In support of this Motion, the Creditor states:

MEMORANDUM IN SUPPORT

1. The Court has jurisdiction over this matter under 28 U.S.C. § 157 and 1334. This is a core proceeding under 28 U.S.C. § 157(b)(2). The venue of this case and this Motion is proper under 28 U.S.C. §§ 1408 and 1409.
2. On May 7, 2004, Timothy C Laug and Angela C Laug (collectively "Debtor") obtained a loan from GMAC Mortgage Corporation in the amount of \$141,600.00. Such loan was evidenced by a Promissory Note dated May 7, 2004 (the "Note"), a copy of which is attached as Exhibit A.

3. To secure payment of the Note and performance of the other terms contained in it, the Debtor executed a Mortgage dated May 7, 2004 (the "Mortgage"). The Mortgage granted a lien on the real property (the "Property") owned by the Debtor, located at 5494 Mallard Drive, Cincinnati, OH 45247 and more fully described in the Mortgage. Timothy C. Laug and Angela C. Laug, husband and wife acquired title to the Property by virtue of a deed from Lexanna J. Seifert, an unmarried person, dated July 16, 1999, filed July 21, 1999, recorded in Official Records Volume 8019, Page 406, Recorder's Office, Hamilton County, Ohio. A copy of said Deed is attached as Exhibit B.
4. The lien created by the Mortgage was duly perfected by the filing of the Mortgage in the office of the Hamilton County Recorder on June 3, 2004. A copy of the Mortgage is attached as Exhibit C. The lien is the first lien on the property.
5. The Note and Mortgage have not been transferred.
6. Creditor has standing to bring the Motion as it is the successor in interest to GMAC Mortgage Corporation as described in detail in the Certificate of Merger attached to the Motion as Exhibit D.
7. The value of the Property is \$204,720.00. This valuation is based on the Auditor's tax record which is attached as Exhibit E.
8. As of the date of this Motion, there is currently due and owing on the Note the outstanding balance of \$125,928.27, plus interest accruing thereon at the rate of 5.5% per annum from April 1, 2011.
9. Other parties known to have an interest in the Property are as follows:
 - a. the Hamilton County Treasurer;
 - b. GMAC Mortgage Corporation is believed to be the holder of a 2nd mortgage on the Property with an approximate payoff of \$20,000.00 per Debtor's Schedule D;

- c. Fifth Third Bank is believed to be the holder of a 3rd mortgage on the Property with an approximate payoff of \$79,827.63 per Debtor's Schedule D.

Attached as Exhibit F is Debtor's Schedule D.

- 10. The balance on Creditor's first mortgage together with the balance on the second mortgage (or judgment lien) exceed the value of the Property. Based upon the lack of equity in the Property, Creditor asserts that the Property is burdensome and/or of inconsequential value and benefit to the estate.
- 11. The Creditor is entitled to relief from the automatic stay under 11 U.S.C. § 362(d)(1) and/or 362(d)(2) for these reason(s):
 - a. Debtor has failed to provide adequate protection for the lien held by the Creditor for the reasons set forth below.
 - b. Per the Note and Mortgage, payments are applied to the last month due. Based upon the foregoing, Debtor has failed to make periodic payments to Creditor since April 2011, which unpaid payments are in the aggregate amount of \$3,472.45 through June 6, 2011.
- 12. Creditor has completed the worksheet attached as Exhibit G.
- 13. This Motion conforms to the standard form adopted in this District except as follows:
Clarification of language in Paragraph 3. Paragraph 6 has been added to clarify how Creditor has standing to bring Motion. Paragraph 10 has been added to clarify there is no equity in the Property beneficial to the estate.
- 14. This Motion does not seek to affect the rights of the Chapter 7 Trustee.

WHEREFORE, Creditor prays for an Order from the Court granting Creditor relief from the automatic stay of 11 U.S.C. § 362 of the Bankruptcy Code to permit Creditor to proceed under law and for such other and further relief to which the Creditor may be entitled.

Respectfully submitted,

/s/ James E. Tebbutt
James E. Tebbutt (0084830)

Holly N. Wolf (0068847)
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Attorneys for Creditor

NOTICE OF MOTION

GMAC Mortgage, LLC has filed papers with the court to obtain relief from stay.

Your rights may be affected. You should read these papers carefully and discuss them with your attorney, if you have one in this bankruptcy case. If you do not have an attorney, you may wish to consult one.

If you do not want the court to grant the relief sought in the motion, then on or before **twenty-one (21) days from the date set forth in the certificate of service for the motion**, you must file with the court a response explaining your position by mailing your response by regular U.S. Mail to:

Clerk of the United States Bankruptcy Court
Atrium Two, Suite 800
221 East Fourth Street
Cincinnati, OH 45202

OR your attorney must file a response using the court's ECF system.

The court must **receive** your response on or before the above date.

You must also send a copy of your response either by 1) the court's ECF System or by 2) regular U.S. Mail to

Manley Deas Kochalski LLC
Attention: James E. Tebbutt
P.O. Box 165028
Columbus OH 43216-5028

George Leicht
PO Box 400
202 East Plane Street
Bethel, OH 45106-0400
gleicht@eos.net

Office of U.S. Trustee
Southern District of Ohio
Party of Interest
36 East Seventh Street
Suite 2050
Cincinnati, OH 45202

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Timothy C Laug
Angela C Laug
5494 Mallard Drive
Cincinnati, OH 45247

Hamilton County Treasurer
County Administration Building
138 East Court Street
Cincinnati, OH 45202

If you or your attorney do not take these steps, the court may decide that you do not oppose the relief sought in the motion and may enter an order granting that relief without further hearing or notice.

CERTIFICATE OF SERVICE

I hereby certify that on June 6, 2011, a copy of the foregoing Motion for Relief from Stay on First Mortgage for Real Property Located at 5494 Mallard Drive, Cincinnati, OH 45247 was served on the following registered ECF participants, **electronically** through the court's ECF System at the email address registered with the court:

Office of U.S. Trustee
Southern District of Ohio
Party of Interest
36 East Seventh Street
Suite 2050
Cincinnati, OH 45202

Andrew L. Ruben
Attorney for Timothy C Laug and Angela C
Laug
118 West Fifth Street
Suite E
Covington, KY 41011
aruben.dkandco@fuse.net

George Leicht
PO Box 400
202 East Plane Street
Bethel, OH 45106-0400
gleicht@eos.net

and on the following by **ordinary U.S. Mail**, addressed to:

Timothy C Laug
Angela C Laug
5494 Mallard Drive
Cincinnati, OH 45247

Hamilton County Treasurer
County Administration Building
138 East Court Street
Cincinnati, OH 45202